**In the High Court of Uttaranchal, at Nainital.**

**Appeal From Order No. 1027/2001**

State of Uttaranchal, through Superintending
Engineer, Lakhvar Vayasi, Construction
Circle-II, Dehradun …. Appellant.

Versus

M/S Jai Prakash Associates Limited.
63, Vasant Loak, Community Center,
Vasant Vihar, New Delhi … Respondent.

AND

**Appeal From Order No. 1028/2001**

State of Uttaranchal, through Superintending
Engineer, Lakhvar Vayasi, Construction
Circle-II, Dehradun …. Appellant.

Versus

M/S Jai Prakash Associates Limited.
63, Vasant Loak, Community Center,
Vasant Vihar, New Delhi … Respondent.

Sri Bhupendra Singh, learned Standing Counsel for the appellant.
Sri V.K. Kohli, learned Senior Advocate, assisted by Sri I.P. Kohli
Advocate for the respondent.

**Coram: Hon'ble P.C. Verma, J.**
**Hon'ble B.C. Kandpal, J.**

Dated: 3rd May, 2006

Both the above Appeals From Orders, U/S 37 of Arbitration and Conciliation Act 1996, have been preferred by the State of Uttaranchal, against the judgment and order dated 17-3-2001, passed by Civil Judge (Senior Division), Dehradun in Misc. Case No. 165/1999 ( Original Suit No. 851/1999), whereby the award of the Arbitrator has been made Rule of the Court.

2- As both the appeals emerge out from the same judgment and order, hence are being decided by this common judgment.

3- Brief facts of the case, are emerge out from the record, are that the State Government filed a Misc. Case No. 165/1999 for setting aside the award of the Arbitrator dated 10-7-1999, on the ground that there was an agreement between U.P. Government and Jai

Prakash Industry with regard to the construction of a Dam in which there was some dispute pertaining to the sales tax between the Department and the Contractor and for resolving this dispute one Sri S.B.L. Kackkar was appointed as an Arbitrator who after hearing both the parties directed the Department to pay the sales tax for Rs. 6,15,146=71. The Department filed his objection by way of the Misc. Case and sought the relief that the award dated 10-7-1999 passed by the Arbitrator be set aside. The respondents filed their objection and took the plea that on the ground taken by the Department and award of the Arbitrator cannot be set aside. It has also been pleaded that . the objection has been raised by the Department after the expiry of 30 days. It is also pleaded that a new plea has been raised by the Department which was not put up before the Arbitrator. Therefore, this plea raised in the objection by the Department cannot be taken into consideration.

4- The learned Civil Judge(Senior Division) dismissed the objection raised by the Department against the award dated 10-7-1999 and accordingly made the award dated 10-7-1999 as Rule of the Court, vide judgment and order dated 17-3-2001.

5- Feeling aggrieved by the aforesaid judgment and order, these appeals have been preferred by the State of Uttaranchal.

6- Heard learned counsel for the parties and perused the record.

7- The appellant has challenged the impugned judgment and order passed by the Civil Judge (Senior Division), by which the award has been made Rule of the Court, on the ground that the impugned judgment is arbitrary, illegal and is against the weight of the evidence on record. It is also argued that on the same facts and law the arbitrator has dismissed the claim of the contractor while the arbitrator on the same legal points has allowed the claim of the contractor, hence both the awards passed by the arbitrator are contrary to each other. Learned counsel for the appellant has also argued that even if it is argued for the sake of argument that trade tax was charged on the goods then the goods were transferred from the Irrigation Department to the contractor, who was the purchaser of the goods and therefore contractor being the

purchaser of the goods was liable to pay trade tax on the same. It is also argued that on the basis of Section 8-D of the Trade Tax Act the contractor is liable to give the trade tax in work charge contract and the Civil Judge (S.D.) committed gross error in not setting aside the award on the plea that he has no jurisdiction to go behind the award and evaluate the reasons given in the award.

8- In order to appreciate the arguments advanced by the learned counsel for the appellant, we have to peruse the provisions of Section-34 of the Arbitration and Conciliation Act, 1996. The grounds in the Section stated above, have been given on which the arbitral award can be challenged. In view of the provisions of Section-34 the grounds of challenge to an arbitral award are very limited.

9- An award can be set-aside only on a ground of challenge U/Ss 12, 13 and 16; provided such a challenge is first raised before the arbitral tribunal and has been rejected by the arbitral tribunal. The only other provision is Section-34 of the said Act and this Section clearly envisages that the award can be set aside by the court only if the party making the application furnishes proof that a party was under some incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or, the party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceeding or was otherwise unable to present his case; or the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

10- The arbitral award can be set aside when the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties. It can also be set aside when the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India. It can also be set aside where some misconduct has been committed by the arbitrator in passing the award.

11- Therefore, there is a limited scope available to the party making the application for setting aside the award. The arbitral award cannot be set aside on the ground that no reasons are given by the arbitrator as to what impelled him to arrive at a particular conclusion. The court cannot proceed to determine where the conclusion is wrong or right as it is not open to the court to attempt to probe the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of award. The intention of law is that the arbitrator is only required to mention in the award that he has referred to and considered all the documents and evidence before him. No matter he relies on them and ultimately discards them from consideration.

12- The Hon'ble Supreme Court in several cases right from 1963 till date has been taking the view that the award cannot be challenged on the ground that it is erroneous. The Hon'ble Apex Court in the case of **Union of India, Vs. A.L. Rallia, Ram** reported in **A.I.R. 1963 Supreme Court 1685** has ruled that:-

> *"An award being a decision of an arbitrator whether a lawyer or a layman chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous. The award of the arbitrator is ordinarily final and conclusive, unless a contrary intention is disclosed by the agreement. The award is the decision of a domestic tribunal chosen by the parties, and the civil courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding, it if be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement. But it is now firmly established that an award is bad on the ground or error of law on the fact of it, when in the award itself or in a document actually incorporated in it, there is found some legal proposition which is the basis of the award and which is erroneous. An error in law on the face of the award means: "you can find*

*in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a 'reference is made to a contention of one party, that opens the door to setting first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound." A.I.R. 1923 P.C. 66, Ref. To. But this rule does not apply where questions of law are specifically referred to the arbitrator for his decision; the award of the arbitrator on those question is binding upon the parties, for by referring the specific questions the parties desire to have a decision from the arbitrator on those questions rather than from the Court, and the Court will not, unless it is satisfied that the arbitrator had proceeded illegally, interfere with the decision."*

13- In an another case **M/s. Allen Berry and Co. Private Ltd., Vs. The Union of India,** reported in **A.I.R. 1971 Supreme Court 696** the Hon'ble Apex Court has observed as follows:-

*"As the parties choose their own arbitrator, they cannot, when the award is good on the fact of it, object to the decision either upon the law or the facts. Therefore, even when an arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the fact of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake. Mere reference to the contract in the award is not to be held as incorporating it."*

14- Further the Hon'ble Apex Court in the case of **The Upper Ganges Valley Electricity Supply Co. Ltd., Vs. The U.P. Electricity Board,** reported in **A.I.R. 1973 Supreme Court 683** has held as under:-

*"It is well settled that if parties constitute an arbitrator as the sole and final judge of the disputes arising between them,*

*they bind themselves as a rule to accept the award as final and conclusive. An award is ordinarily not liable to be set aside on the ground that either on facts or in law, it is erroneous."*

15- Further the Hon'ble Apex Court in a decision **M/s. Hindustan Tea Co. Vs. M/s. K. Shashikant & Co. and Another** reported in **J.T. 1986, Supreme Court, page 818** has held as under:-

*"The Award is reasoned one. The objections which have been raised against the Award are suchs that they cannot indeed be taken into consideration within the limited ambit of challenge admissible under the scheme of the Arbitration Act. Under the law, the arbitrator is made the final arbiter of the dispute between the parties. The Award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts. Strong reliance was placed by the appellant's learned counsel on an old Madras decision in Yogambal Boyee Ammani Ammal Vs. Naina Pillai Markayar, ILR 33 Madras 15. In our view, on the facts of this case challenge to the Award is not permissible by taking the stand that the Arbitrator acted contrary to the provisions of Section 70 of the Contract Act. In these premises the objection filed to the Award has to be rejected. We direct the Award to be made a rule of the Court. The parties shall bear their own costs throughout."*

16- Further the Apex Court in an another case **Coimbatore District Podu Thozillar Samgam Vs. Bala Subramania Foundry and others** reported in **A.I.R. 1987 Supreme Court 2045** has held:

*"An award can only be set aside where there is an error on its face. Further, it is an error of law and not mistake of fact committed by the arbitrator which is justiciable in the applicable before the court. It is an error of law and not mistake of fact committed by the arbitrator which is amenable to corrections by the Court.*

*Where the alleged mistakes or alleged errors, if there be any of which grievances were made were mistakes of fact if at all, and did not amount to error apparent on the face of the record, the objections were not sustainable and award could not be set aside."*

17- The Hon'be Supreme Court further in the case of **Puri Construction Pvt. Ltd. Vs. Union of India** reported in **AIR 1989 Supreme Court page 777** and in the case of **Food Corporation of India vs. Joginderpal Mohinderpal and another page 1263** has held that-

*"it is not necessary for a Court to examine the merits of the award with reference to the materials produced before the arbitrator. The Court cannot sit in appeal over the views of the arbitrator by re-examining and reassessing the materials."*

18- The Hon'ble Apex Court further in the case of **M/s Hind Builders, Vs. Union of India,** reported in **AIR 1990 Supreme Court 1340** has held as under:-

*"In a matter on which the contract is open to two equally plausible interpretations, it is legitimate for the arbitrators to accept one or the other of the available interpretations and, even if the Court may think that the other view is preferable, the Court will not and should not interfere."*

19- Thus on the basis of the aforesaid decisions of the Hon'ble Apex Court it is quite clear that the award passed by the arbitrator cannot be set aside unless it is against the provisions of the settled law. This position is also clear that the court cannot sit as an Appellate Court in order to assess and examine the evidence on the record. The provision of the Arbitration and Conciliation Act in this regard is very clear that the court can interfere only when there is a misconduct committed by the arbitrator in passing the award or the award is prima facie against the provisions of law. The arbitrator in his award has categorically recorded the findings for reaching to a definite conclusion. We do not find any illegality or any misconduct in the arbitral award. The court below has righty confirmed the award and made it a Rule of the court. We do not

find any ground to interfere in the impugned judgment and order passed by the court below. The Court below has also recorded its finding which is based on the legal proposition of law and the finding recorded by the court below is not liable to be disturbed. We do not find any material available on the record which may suggest that the impugned judgment and order passed by the court below may be set aside. The Court below has rightly observed that the arbitral award cannot be set aside unless there is an error of law or the misconduct committed by the arbitrator in passing the award.

20- The appeals lack merit and are liable to be dismissed. The impugned judgment and order passed by the court below deserves to be confirmed.

21- Accordingly the appeals are dismissed. The impugned judgment and order dated 17-3-2001 passed by the court below, by which the award passed by the arbitrator has been made Rule of the Court, is hereby confirmed.

22- Let a copy of this order be placed in connected A.O. No. 1028/2001.

**(B.C. Kandpal, J.)** **(P.C. Verma, J.)**

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